CV 07 3558 FILED

RECEIVED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.
★ AUG 24 2007 ★
LONG ISLAND OFFICE

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

GERARD DEPASCALE, LIAM NEVILLE, and JOANNE DEPASCALE,

Plaintiffs,

- against -

SYLVANIA ELECTRONIC PRODUCTS, INC.; GENERAL TELEPHONE AND ELECTRIC, INC.; VERIZON COMMUNICATIONS, INC.; and DOES 1-1000,

Defendants.

SUPREME COURT
STATE OF NEW YORK,
COUNTY OF NASSAU
CASE NO. 07-012873

NOTICE OF REMOVAL OF CIVIL ACTION TO FEDERAL COURT BY DEFENDANTS VERIZON COMMUNICATIONS INC. AND SYLVANIA ELECTRIC PRODUCTS, INC.

WEXLER, J.
LINDSAY, M.

TO THE HONORABLE JUDGES OF THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NEW YORK:

PLEASE TAKE NOTICE that Defendants Verizon Communications Inc. (incorrectly named as "Verizon Communications, Inc.") and Sylvania Electric Products, Inc. (improperly named as "Sylvania Electronic Products, Inc."), by and through the undersigned counsel, hereby remove this action from the Supreme Court of New York, County of Nassau, to the United States District Court for the Eastern District of New York.[1] Removal is based on the following grounds:

1. This is a civil action that may be removed to this Court pursuant to 28 U.S.C. Section 1441(a) and (b) and 42 U.S.C. Section 2210(n)(2).

2. On or about July 25, 2007, Plaintiffs Gerard DePascale, Liam Neville and

---

1 To the best of Defendants' knowledge, General Telephone and Electric, Inc. has not been served with a summons and complaint in this action. Accordingly, it need not join in this removal petition. In the event that it has been served, General Telephone and Electric, Inc., by and through its undersigned counsel Kirkland & Ellis LLP, hereby joins in this removal petition and consents to removal.

Dockets.Justia.com

JoAnne DePascale commenced an action against Defendants in the Supreme Court of New York, County of Nassau, by filing a Complaint entitled *Gerard DePascale, Liam Neville, and Joanne DePascale v. Sylvania Electronic Products, Inc.; General Telephone and Electric, Inc.; Verizon Communications, Inc.; and Does 1-1000,* Case No. 07-012873. A true and correct copy of Plaintiffs' Complaint and summons thereon, is attached hereto as Exhibit A.

3. Defendant Verizon Communications Inc. was served with the summons and complaint in this action on July 26, 2007. As of August 23, 2007, defendant General Telephone and Electric, Inc. has not been served with the summons and complaint. Although there is no entity with the name "Sylvania Electronic Products, Inc.," Defendants assume that plaintiffs intended to name as a defendant Sylvania Electric Products, Inc. On July 26, 2007, plaintiffs served the summons and complaint on the registered agent for a different corporate entity, Sylvania Lighting Services Corporation -- which did not constitute proper service on the named defendant "Sylvania Electronic Products, Inc." or Sylvania Electric Products, Inc. Without waiver of any of its defenses, including defenses as to personal jurisdiction, improper service, and improper party, Sylvania Electric Products, Inc. joins in this removal petition and consents to removal.

4. Plaintiffs seek personal injury and loss of consortium damages allegedly caused by the exposure of Plaintiffs Gerard DePascale and Liam Neville to "uranium," "thorium," "radioactive substances" and "industrial solvents" allegedly discharged from Defendants' "nuclear fuel" facility at 100 Cantiague Rock Road, referred to in the Complaint as the "Hicksville property." (Complaint ¶¶ 7, 24, 25.)

5. This Court has original jurisdiction over the subject matter of the above-described action under 28 U.S.C. Section 1331 and 42 U.S.C. Section 2210(n)(2) for the

following reasons:

(a) This is a "public liability action" which arises out of an alleged "nuclear incident" and is subject to the Atomic Energy Act of 1954, 42 U.S.C. Section 2011 *et seq.*, as amended by the Price-Anderson Act, 42 U.S.C. Section 2210.

(b) A "public liability action" is an action in which "any legal liability arising out of or resulting from a nuclear incident" is alleged, except for certain actions which are not relevant here. 42 U.S.C. Section 2014(w).

(c) A "nuclear incident" is defined as:

> any occurrence . . . within the United States causing, within or outside the United States, bodily injury, sickness, disease or death, or loss of or damage to property, or loss of use of property, arising out of or resulting from the radioactive, toxic, explosive, or other hazardous properties of source, special nuclear, or byproduct material . . . . [42 U.S.C. Section 2014(q).]

(d) As amended, the Atomic Energy Act of 1954 now provides that the United States District Court where the alleged nuclear incident takes place has original jurisdiction. The Act provides as follows:

> With respect to any public liability action arising out of or resulting from a nuclear incident, the United States District Court in the district where the nuclear incident takes place . . . shall have original jurisdiction without regard to the citizenship of any party or the amount in controversy. [42 U.S.C. Section 2210(n)(2).]

(e) The alleged incident which is the subject of the above-described action arises out of the operation of a facility that produced, handled and stored nuclear fuel rods at the Hicksville property, including the use of uranium and thorium. (Complaint ¶ 7.) The Hicksville property is located in Nassau County, New York, and within the territorial jurisdiction of this Court. 28 U.S.C. Section 112(c).

6. This Notice is timely under 28 U.S.C. Section 1446(b) and 42 U.S.C.

Section 2210(n)(2) since it is filed within 30 days after service by Plaintiffs' counsel of the Complaint (see Exhibit A).

7. All served Defendants join in this removal.

WHEREFORE, Defendants remove this action from the Supreme Court of New York, County of Nassau, to this Court.

Dated: August 24, 2007

Respectfully submitted,

KIRKLAND & ELLIS LLP

By:________________________
William H. Pratt (WP 5178)
Frank Holozubiec (FH 0442)
Citigroup Center
153 East 53rd Street
New York, New York 10022-4611
Telephone: (212) 446-4800

Robert Folks
ROBERT L. FOLKS & ASSOCIATES, LLP
510 Broad Hollow Road, Suite 304-A
Melville, New York 11747
Telephone: (631) 845-1900

Ned N. Isokawa
John P. Phillips
PAUL, HASTINGS, JANOFSKY & WALKER LLP
55 Second Street
San Francisco, California 94105
Telephone: (415) 856-7000

Attorneys for Defendants
Verizon Communications Inc.,
General Telephone and Electric, Inc. and
Sylvania Electric Products, Inc.

TO: Paul A. Marasco, Esq.
THE MARASCO LAW FIRM
1328 Bay Shore Blvd.
Rochester, New York 14609